

COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND

2009 Legislative Session

Legislative Day # 8

BILL NO. 2008-23

Introduced by: Charles County Commissioners

Rezoning of Two Parcels from AC and RV to CC (Chaney Enterprises, Inc.)

Date introduced: 06 / 25 / 08

Public Hearing: 06 / 25 / 08 6:30 p.m. (for original Zoning Map Amd)

Public Hearing: 05 / 19 / 09 6:00 p.m. (for revised Zoning Map Amd)

Commissioners Action: 06 / 17 / 09 Approve

Commissioner Votes: WC: Y, EP: Y, RC: Y, SG: Y, GH: Y

Pass/Fail: Pass

Effective Date: 06 / 27 / 09

Remarks: The initial public hearing on this ZMA was conducted on 6/25/08; the public record was held open for comment until 7/9/08. The Commissioners conducted a follow-up work session on 7/29/08. The Commissioners re-opened the public record for additional comment from 9/29/08 through 10/10/08. The Applicant revised the ZMA to change request from IH to CC zoning on the subject property. The Commissioners conducted a work session on the revised ZMA on 4/22/09 followed by a public hearing on 5/19/09; the public record remained open until 6/04/09. The Commissioners conducted a follow-up work session on 6/17/09 at which time they voted to approve the ZMA.

1 **COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND**

2
3 **2009 Legislative Session**

4
5 Bill No. 2008-23

6 Chapter. No. 297

7 Introduced by Chaney Enterprises

8 Date of Introduction 6/27/08

9
10 **BILL**

11
12 AN ACT concerning
13 Rezoning of two parcels from Agricultural Conservation (AC) and Village
14 Residential (RV) to Community Commercial (CC).

15
16 FOR the purpose of
17 Resolving a substantial change in the character of the neighborhood of the existing zoning
18 classification, pursuant to Article 66B, §4.05(a), of the Annotated Code of Maryland.

19
20 BY amending
21 Charles County Zoning Map 36.

22
23 1. **SECTION 1.** NOW, THEREFORE, IN DUE CONSIDERATION OF THE
24 TESTIMONY, FINDINGS OF FACT AND CONCLUSIONS OF LAW DESCRIBED
25 IN ATTACHMENT "A", BE IT ENACTED BY THE COUNTY COMMISSIONERS
26 OF CHARLES COUNTY, MARYLAND, that the Zoning Map of Charles County,
27 Maryland, specifically Tax Map 36, Grids 16 and 23, Parcels 47, 99 and 217, in the
28 Ninth Election District Charles County, Maryland, and in the area known as Hughesville

1 located off of Prince Frederick Road, west of the Hughesville Post Office and
2 Brookleigh Woods Subdivision and east of the Hughesville Industrial Park in
3 Hughesville, Maryland, be amended as follows:

4
5 **Rezone the parcel from Agricultural Conservation (AC) and Village**
6 **Residential (RV) to Community Commercial (CC) as shown on attached**
7 **Tax Map 36.**

8
9 **SECTION 2.** BE IT FURTHER ENACTED, that the change in zoning
10 specified herein is conditioned upon the execution of the Zoning Indenture in
11 accordance with the provisions of §145 of the Code of Charles County,
12 Maryland.

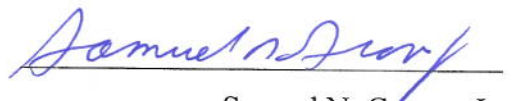
1 **SECTION 3.** BE IT FURTHER ENACTED, that this Act shall take effect TEN
2 (10) calendar days after it becomes law.

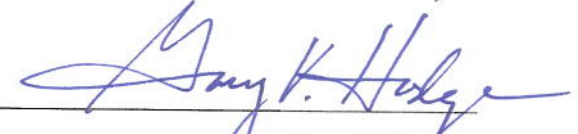
3 COUNTY COMMISSIONERS OF
4 CHARLES COUNTY, MARYLAND


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7 Wayne Cooper, President

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10 Edith J. Patterson, Vice President

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12 Reuben B. Collins, II

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15 Samuel N. Graves, Jr.

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18 Gary V. Hodge

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20 ATTEST:
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22 Denise Ferguson, Clerk

**COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND
DECISION AND ORDER
BASE ZONE AMENDMENT ZMA #07-31**

After public hearings on the proposed Base Zone Amendment ZMA #07-31 held June 25, 2008 and May 6, 2009, having considered the entire record made at such hearing, including all testimony, documents, and exhibits offered therein by way of oral, written, or referenced material and in light of matters of public record of which official notice has been taken, the County Commissioners of Charles County, Maryland, hereby make the following Findings of Fact and Conclusions of Law applicable to the proposed Base Zone Amendment ZMA #07-31.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Petitioner, Chaney Enterprises, Inc., has requested a rezoning of approximately 149.56 acres, more or less, of land from AC, Agricultural Conservation Zone and the RV, Village Residential Zone to CC, Community Commercial Zone for the subject properties.

The Property

2. The subject properties are identified as Tax Map 36, Grids 16 and 23, Parcels 47, 99 and 217, in the Ninth Election District of Charles County, Maryland and are commonly referred to as the "Jenkins Property" (hereinafter "the Property"). The Property is located off of Prince Frederick Road (Route 231), west of the Hughesville Post Office and the Brookleigh Woods Subdivision and east of the Hughesville Industrial Park in Hughesville, Maryland. The Property is a former sand and gravel mine which is in the final stages of the reclamation process.

3. Parcels 99 and 217 are zoned Agricultural Conservation (AC) and Parcel 47 is zoned both AC and Village Residential (RV). The Property was zoned AC, Agricultural Conservation and AC/RV, Village Residential, during the 1992 Comprehensive Rezoning. Prior to the 1992

Rezoning, the Property was zoned R-3, which was a rural agricultural zone with a permitted density of one (1) unit per three (3) acres.

4. The Property is adjoined by properties zoned IG, General Industrial, RV, Village Residential and AC, Agricultural Conservation. The Property is not located within the Hughesville Sub-Area Plan but is immediately adjacent to the eastern boundary of that Plan.

Procedural History

5. The Petitioner's original request was to rezone the Property to IH, Heavy Industrial. Following the first Public Hearing on March 23, 2009, Edward Gibbs, attorney for the Petitioner, filed an amendment to the Zoning Map Amendment Application requesting that the zoning be changed instead to CC, Community Commercial rather than IH, Heavy Industrial.

6. The Petitioner's request, in accordance with Article 66B and Chapter 297 of the Charles County Code (*Charles County Zoning Ordinance*), is based both upon a "Substantial Change in the Character of the Neighborhood" and "Mistake in the Original Zoning".

7. Petitioner's application, as required by §297-448(B) of the *Charles County Zoning Ordinance*, was filed October 31, 2007.

8. The Planning Commission held a Public Meeting on the application to rezone the Subject Properties to IH, Heavy Industrial on March, 17, 2008.

9. On May 5, 2008, the Planning Commission held a work session and recommended the County Commissioners approve the Zoning Map Amendment by a 5-2 vote. The Planning Commission concluded that there was a substantial change in the character of the neighborhood since the 1992 Comprehensive Rezoning. The Planning Commission's recommendation was based upon the cumulative impact of the economic and physical changes made in the Hughesville area, including both the Property and the Neighborhood, with the planning, building

and opening of the Hughesville By-Pass; the impact the expansion of the Patuxent Naval Air-station has had on traffic patterns and flow in the Neighborhood, the economic and physical impact of the 2001 Tobacco Subsidy Bill on the Neighborhood and the Property, the decline of what is known as the "Main Street" of Hughesville, the development and expansion of businesses such as the Harley-Davidson dealership and Everything Amish, the rezoning of Everything Amish and the impact of the growth within neighboring Calvert County on the Neighborhood. The Dissenting Opinion of the two members who voted against the recommendation focused primarily on those members' concerns with rezoning the Property to IH, Heavy Industrial.

10. The County Commissioners held a Public Hearing on June 25, 2008 at 6:30 p.m. in the Charles County Commissioner's Hearing Room. The hearing was properly advertised on June 11, 2008 and June 13, 2008 in the *Maryland Independent*, a newspaper of general circulation within Charles County, Maryland. In accordance with §297-448 of the *Charles County Zoning Ordinance*, the Property was posted and an affidavit of posting was received.

11. Testimony in opposition to the requested map amendment which was received at the June 2008 Public Hearing and the subsequent open record period centered mainly upon the effect of an IH, Heavy Industrial zoning at a site located at one of the Gateways to the Hughesville Sub-Area Plan; the effect of Heavy Industrial permitted uses, specifically the possible location of a gravel wash plant, on neighboring subdivisions; the effect of Heavy Industrial uses on traffic flow; safety concerns related to the volume and nature of heavy dump trucks generated by a gravel wash plant; and, the types of other various uses allowed under an IH, Heavy Industrial zoning.

12. Following this Public Hearing on March 23, 2009, Petitioner amended the Application to

eliminate the request to rezone the Property to IH, Heavy Industrial and instead requested a rezoning to CC, Community Commercial. According to the Applicant, "During the course of our public hearing, a number of citizens testified that they felt the IH Zone was not the appropriate zoning classification for the property. Several people indicated that a less intense zone would be more appropriate. Upon further consideration, we have determined to seek a less intensive zoning classification for the property . . . We further believe the CC zone will assist in implementing the Hughesville Revitalization Plan."

13. A second Public Hearing was held on the Petitioner's amended Zoning Map Amendment on May 19, 2009 at 6:00 p.m. in the Charles County Commissioners' Hearing Room. The hearing was properly advertised on May 1, 2009 and May 6, 2009. In accordance with §297-448 of the *Charles County Zoning Ordinance*, the Property was posted and an affidavit of posting was received.

Neighborhood

14. The "Neighborhood" is identified on Exhibit A, Zoning Neighborhood Exhibit, a copy of which is attached hereto and incorporated by reference. The northern boundary of the neighborhood is Cracklingtown Road to Maryland Route 5 to the PEPCO Railroad Right-of-Way. The Western Boundary is the Gilbert Run stream valley to Carrico Mill Road. The Southern Boundary is Carrico Mill Road and Scout Camp Road and the Eastern Boundary is Goode Road to Indian Creek Stream Valley. For the reasons stated herein the Commissioners find that the Neighborhood area is accurately defined for a zoning consideration.

Substantial Changes in the Neighborhood

15. Located at the crossroads of Maryland Route 5 and Maryland Route 231, the Hughesville Village is the largest village in rural Charles County. Regionally, Hughesville is centrally located

at the geographic center of Southern Maryland, providing access to Prince Frederick in Calvert County and both Charlotte Hall and Lexington Park in St. Mary's County. (Chapter 1 Hughesville Revitalization Plan)

16. Settled as part of the Southern Maryland Region in 1643, the area known as Hughesville was established as a crossroads agricultural community in the late 19th Century. Hughesville and the surrounding region quickly established their economies around the tobacco agricultural industry. As a result of that industry and the establishment of the railroad through Hughesville, the village continued to grow during the first half of the 20th century. (Chapter 1 Hughesville Revitalization Plan)

17. At the time of the 1992 Comprehensive Rezoning the Village of Hughesville existed as a rural based community located around a core of commercial and industrial uses. The business core was located from the Tobacco Warehouses at the north end to the central intersection at Maryland Route 5 and Maryland Route 231. Hughesville was the hub for tobacco sales for the tri-county area of Charles, Calvert and St. Mary's counties.

18. In 2001 the Maryland General Assembly enacted the Tobacco Subsidy Bill. The Tobacco Subsidy Bill has had both an economic and physical impact on the Neighborhood and Property. The Bill in essence created a program in which farmers were paid a subsidy not to grow tobacco. The economic effect was to stop any significant production of tobacco within the region and its sale in Hughesville. 2005 marked the final market sale of tobacco in Hughesville. Subsequently, the Tobacco Warehouses ceased to be utilized for their original and historical purposes. Hughesville also ceased to be a destination for those individuals associated with the production and sale of tobacco. As such, local businesses began to decline.

19. Hughesville continues to try and deal with the issues created by the decline in the tobacco

industry. (Chapter 1, Hughesville Revitalization Plan)

20. The expansion of the Patuxent Naval Air Station has impacted traffic flows and patterns affecting the Neighborhood and Property. In 1998 the Federal Government made a decision to move numerous Federal facilities from other areas, such as, Crystal City, Virginia and Washington, D. C. to the Patuxent River Base. The transfer resulted in a significant increase in the number of civilian employees within the Lexington Park area. This resulted in a substantial increase in traffic on Maryland Route 5 heading south from the Washington Metropolitan Area in order to get to Lexington Park in St. Mary's County. For the most part, the increased traffic had to pass along Maryland Route 5 and through Hughesville. The increase in through traffic adversely impacted the ability of cars and pedestrians to make their way within Hughesville and access local businesses which predominately abut Maryland Route 5. Thus, local businesses were further adversely affected.

21. Since 1992, Calvert County, to include Prince Frederick, also experienced unprecedented growth. Individuals traveling to Calvert County also traversed the Maryland Route 5 corridor through Hughesville, utilizing the intersection at Maryland Route 5 and Maryland Route 231. This contributed to the increase in traffic and negative impact on the Neighborhood and the Property.

22. The Hughesville By-Pass was constructed to ease the traffic congestion, address safety issues and improve access to the immediate area (Chapter 2, Hughesville Revitalization Plan). The Hughesville By-Pass is located east of the Property. The By-pass allows cars moving north and south along Route 5 to continue at a higher rate of speed and without the necessity to stop and go around the Village of Hughesville. The Hughesville By-Pass was completed and open for public use in 2007. While the By-pass has allowed traffic to by-pass the intersection, it also resulted in a by-pass of the Village of Hughesville. The result is little traffic through the village, further

impacting the local businesses within Hughesville. The Hughesville area, to include the Neighborhood and the Property, has consequently undergone drastic economic and physical changes as a result of the planning, building and opening of the Hughesville By-Pass.

23. Based upon the aforementioned factors, the Neighborhood and the Property have been impacted by the decline in what is known as the “Main Street” of Hughesville. Since 1992 various businesses have closed within Hughesville. These include a car dealer, a market, a key implement sales and service center, barber shop and other locally based commercial businesses.

24. While there has been a decline in the “Main Street,” the opening of the By-Pass created a positive opportunity for a new, accessible and viable corridor for business and economic development.

25. The Hughesville Sub-Area Plan was adopted in 2007. In adopting the Hughesville Sub-Area plan the Commissioners recognized that changes were occurring in Hughesville and that steps would need to be taken to address those changes in a positive manner.

26. The development and expansion of new businesses such as the Harley-Davidson dealership, the completion of the current Everything Amish store and warehouse in 1999, and the expansion of the SMECO Head Quarters have all impacted and created a change within the Neighborhood. These changes highlight the need, consistent with the implementation of the Hughesville Sub-Area Plan, to develop destination based uses.

27. The rezoning of Everything Amish in 2008 was recognition by the Commissioners of the changing land use patterns within and around Hughesville.

28. On February 10, 2009, the Commissioners approved a Zoning Map Amendment to site a floating zone on the property identified as Tax Map 36, Grid 8, Parcels 126 and 392 located off of Foster Lane, a service road that runs parallel with the Maryland Route 5 Bypass and intersects with

Gallant Green Road in Hughesville, Maryland, encompassing approximately 44.80 acres in area, amending the zoning from AC, Agriculture Conservation to PEP, Planned Employment Park. Known as “Hughesville Station,” the property is located outside the Hughesville Village, along the Hughesville By-Pass and adjacent to the northern gateway to the Village. In approving the floating zone for the property known as “Hughesville Station,” the Commissioners recognized the changing land use patterns in and around Hughesville and sought to strengthen the revitalization efforts.

29. Opponents to the proposed re-zoning address each element of change individually and in isolation to argue that change has not occurred. The Commissioners, in considering whether substantial change has occurred, must consider all changes cited and pertinent facts in concert, and in their totality, to determine whether substantial change has occurred. Each change cannot be segregated and considered in isolation. Considering the cumulative impact of these changes taken together, the Commissioners have determined that there has been a substantial change in the Neighborhood.

***Community Commercial Zoning
Consistency with the Comprehensive Plan***

30. The Commissioners find that rezoning the Property CC, Community Commercial Zoning is consistent with the Comprehensive Plan and compatible with the surrounding neighborhood. The Property is located adjacent to property which is already zoned CV, Commercial Village. CC, Community Commercial provides a wide range of commercial uses and establishments to serve several neighborhoods in appropriate locations along major roads while discouraging strip development and provides a transitional buffer from the neighboring industrial zoned property to its east. CC, Community Commercial permits an array of permissible commercial uses such as professional offices, banks, retail sales and general merchandise establishments. Further, the

rezoning will augment the Hughesville Sub-Area Plan by developing destination based uses and, importantly, an economic base for future Village infrastructure enhancements.

Hughesville Sub-Area Plan

31. The Hughesville Revitalization Plan was adopted in May of 2007 and recognizes the changing character of the Hughesville. The Plan was developed to revitalize Hughesville and address changing land use patterns. The Village Core is the “heart” of the village. According to the Plan, “Revitalization of the village core will foster economic development. According to the Plan’s Vision Statement, “Hughesville will be a vibrant, economically sustainable rural village with a main street or village core area that is pedestrian in scale and lined with local shops. It is a place where people can meet in public spaces adjacent to refurbished store fronts. It is a place where a main street area or village core provides the commercial services required by the surrounding local community and where the public facilities adequately serve the needs of residents and businesses. The character of residential neighborhoods within the Village will be preserved and enhanced. The Plan envisions a Village core with a streetscape concept which provides for more pedestrian friendly walk ways and on-street parking. The Hughesville Revitalization Plan suggests a development of niche markets to restore viability to the Village core.

32. The Hughesville Revitalization Plan recommends the creation of “Gateways” to the Village and the Village Core. Gateways are used to mark the edges of a community while welcoming visitors and customers. The Property is located adjacent to one of the proposed Gateways identified in the Plan. The Plan also identifies the proposed zoning of the land directly adjacent to the Property, and located within the Village, as CV, Commercial Village. The Maryland Department of Planning in its June 2008 letter noting a possible inconsistency with the County’s Comprehensive Plan regarding the original proposed re-zoning of the land to IH, Heavy Industrial stated that, “It is

the location of this property, adjacent to the Village Center that makes any development on this parcel critical to the success of the Hughesville Revitalization efforts.” For that reason, the Maryland Department of Planning opposed a Heavy Industrial use located adjacent to a “Gateway.” Since the Petitioner amended their request to re-zone the property to less intense CC, Community Commercial, the Maryland Department of Planning has not noted any further concerns.

33. Those opposed to the proposed re-zoning have voiced their concerns that re-zoning the Property CC, Community Commercial, would undermine the Hughesville Sub-Area Plan, its revitalization efforts and would draw development away from the core of the Village. To the contrary, the Commissioners find that re-zoning the Property supports and enhances the Hughesville Sub-Area Plan and will contribute to the revitalization of Hughesville.

The Property is located at one of the designated Gateway’s to the Village and is adjacent to property already zoned CV, Commercial Village. Opposition to the re-zoning argues that the Property is outside the boundaries of the Hughesville Revitalization Plan and Priority Funding Areas. It should be noted, that the same opposition supported the approval of Hughesville Station, a Planned Employment Park, which is also located outside of the Village boundaries and the Priority Funding Areas. Testimony during that hearing indicated that opponents saw Hughesville Station as an opportunity to draw people to the Village Core.

Likewise, the Commissioners find that re-zoning the Property CC, Community Commercial will allow the development of a distinct eastern gateway and a commercial and employment node that will draw people to the Village Core. Creating such opportunities and distinct Gateways is critical to the success of the Revitalization Plan. The creation of an eastern commercial Gateway compliments Hughesville Station, the northern employment Gateway.

Allowing the re-development of these two properties in tandem augments and strengthens the Revitalization Plan by providing daily employment and economic activity. The opportunities provided by CC, Community Commercial is distinct from the commercial activities, such as small boutique and specialty shops envisioned within the Village. It should be noted that a number of business owners within the Village testified in favor of the re-zoning, viewing it as the economic stimulus needed to revitalize Hughesville and draw people into the Village.

The County Commissioners, in consideration of the above Findings of Fact and Conclusions of Law, hereby determine that there has been a substantial change in the character of the Neighborhood warranting a rezoning of the subject property from AC Agricultural Conservation zone and AC/RV, Rural Village, zones to CC, Community Commercial zone as a Zoning Map Amendment. The County Commissioners do not find that there was a “mistake” in the original zoning.

ORDER


The Subject Property currently zoned AC and AC/RV should be zoned in accordance with the terms and provisions of Chapter 297 of the *Charles County Code* within the CC Zone as shown on the attached Zoning Map 36.

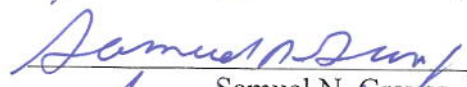
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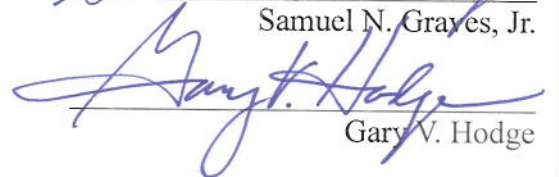
COUNTY COMMISSIONERS OF
CHARLES COUNT, MARYLAND


Wayne Cooper, President

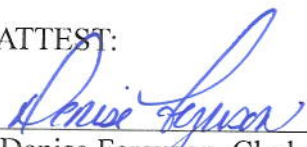

Edith J. Patterson, Vice President


Ruben B. Collins, II


Samuel N. Graves, Jr.


Gary V. Hodge

ATTEST:


Denise Ferguson, Clerk



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4219722M

CHARLES COUNTY, MARYLAND

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PROPERTY DATA			
PROPERTY ID	PROPERTY NAME	PROPERTY TYPE	PROPERTY STATUS
P. 381	WILLIAM E. THOMPSON	RESIDENTIAL	OWNED
P. 382	WILLIAM E. THOMPSON	RESIDENTIAL	OWNED
P. 383	WILLIAM E. THOMPSON	RESIDENTIAL	OWNED
P. 384	WILLIAM E. THOMPSON	RESIDENTIAL	OWNED
P. 385	WILLIAM E. THOMPSON	RESIDENTIAL	OWNED
P. 386	WILLIAM E. THOMPSON	RESIDENTIAL	OWNED
P. 387	WILLIAM E. THOMPSON	RESIDENTIAL	OWNED
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SCALE IN FEET



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